

CLYDE K. KOBEMAN

IBLA 79-193

Decided October 29, 1979

Appeal from decision of the New Mexico State Office, Bureau of Land Management, disqualifying simultaneous oil and gas lease offer NM-35367.

Affirmed.

1. Notice: Generally -- Oil and Gas Leases: Rentals

Where BLM sends by certified mail a request for payment of advance rental to the address of record of a successful offeror in a simultaneously filed oil and gas lease drawing and such notice is returned by the Post Office, marked "Moved, left no address," the offeror is properly deemed to have "receipt of notice" under 43 CFR 1810.2, where the offeror's address of record is that of a leasing service and the leasing service moves, filing a change of address form with the Post Office in the name of the leasing service, but not in the name of appellant.

2. Oil and Gas Leases: Rentals

A successful offeror in a BLM simultaneous filing procedure who fails to pay the first year's advance rental within 15 days from the receipt of notice that such payment is due will be disqualified as an offeror.

APPEARANCES: Joel Held, Esq., Durant, Mankoff, Davis, Wolens, & Francis, Dallas, Texas, for appellant; Robert C. Bledsoe, Esq., Cotton, Bledsoe, Tique, Morrow, & Dawson, Midland, Texas, for Howard W. Parker.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Clyde K. Kobbeman has appealed from a letter-decision of the New Mexico State Office, Bureau of Land Management (BLM), dated effective January 4, 1979, disqualifying his simultaneous oil and gas lease offer NM-35367 because he failed to submit the first year's rental due within 15 days from receipt of the notice as required by 43 CFR 3112.4-1.

Kobbeman's drawing entry card (DEC) was drawn with first priority for parcel No. NM 98 in the New Mexico drawing held November 7, 1978. Because Kobbeman's address on the DEC was a common address used by other applicants in the drawing, BLM by letter of November 21, 1978, required additional evidence to clarify the circumstances of the offer. The letter was sent certified mail to the address of record, 6060 N. Central Expressway, Suite 254, Dallas, Texas 75206.

The record shows that appellant responded to BLM's inquiry by a statement filed December 8, 1978, that the address on the DEC was that of Federal Energy Corporation (FEC), his leasing service for the filing of this offer.

BLM having determined that appellant was a qualified offeror subsequently sent the notice of rental due dated December 14, 1978, by certified mail to the same address of record, 6060 N. Central Expressway, Suite 254, Dallas, Texas 75206. That notice was not delivered to appellant. It was returned to the New Mexico State Office December 20, 1978, stamped by the Post Office "Moved, left no address."

When the required first year's rental was not received within the time allowed by 43 CFR 3112.4-1, the State Office automatically disqualified appellant's offer effective January 4, 1979, and offered the lease to the offeror with the DEC having second priority, Howard W. Parker. Appellant subsequently filed the rental payment January 22, 1979, through FEC.

In his statement of reasons Kobbeman argues essentially that his offer should not have been disqualified because he never received the notice of rental due. He states the DEC was mailed to BLM by FEC with a return address for the purpose of this filing at 6060 N. Central Expressway, Suite 254, Dallas, Texas (hereinafter referred to as 6060); that on or about November 1, 1978, FEC moved its principal offices and filed a change of address form for FEC with the postal authorities requesting that all mail be forwarded to 8350 N. Central Expressway, Dallas, Texas (hereinafter referred to as 8350). He contends that the office space at 6060 was still under active lease to FEC, and

the effectiveness of the lease further evidences the fact that the envelope which purportedly contained the Notice of Rent Payment Due was deliverable to Kobbeman at that address. Therefore there can be no question that the statement by the Post Office in advising the BLM in New Mexico that Kobbeman "Moved, left no address" is simply not true.

Appellant raises the question of how the Post Office could be aware that he had moved at all if the FEC lease was still in effect and a change of address form had not been filed for him from 6060. Appellant also points out that on other occasions, both before and after the rental notice, mail addressed to him at 6060 was forwarded by the postal authorities to 8350.

Mr. Howard Parker, the No. 2 drawee, has responded to this appeal emphasizing that although FEC made an attempt to have its address changed with the Post Office, Mr. Kobbeman did not file a change of address form for himself. Nor did he make any effort to make any change of address with the BLM. Parker argues that Kobbeman should have been automatically disqualified under 43 CFR 3112.4-1 because he was properly deemed to have received the notice of rental due at his last address of record in accordance with 43 CFR 1810.2.

The regulation requiring timely payment of the first year's rental provides:

§ 3112.4-1 Rental payment.

A lease will be issued to the first drawee qualified to receive a lease upon payment of the first year's rental. Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing.

However, in this case appellant is claiming not to have received the BLM notice because of an error of the Post Office in either failing to deliver the notice to his last record address at 6060 or in the alternative, failing to forward the notice to his filing service's new forwarding address at 8350.

The issue for our consideration is whether legal notice was in fact given to appellant when the Post Office attempted delivery by certified mail at 6060. We hold that it was.

The regulation governing transmittal of documents by certified mail, 43 CFR 1810.2(b) provides that:

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

[1, 2] Appellant argues that maintenance of its office lease by FEC at the old address, 6060, means that mail was deliverable to appellant at this old address of FEC. Appellant admits that on or about November 1, 1978, FEC with its subsidiaries moved its principal offices and filed a change of address form with the postal authorities requesting that mail be forwarded to its new address, 8350. In light of this change of address request, the Post Office may be fairly expected not to deliver any mail to FEC at its old address but only to its new address. The basic problem here is that appellant's name appeared on the DEC but the address given for him was that of FEC. The difficulty stems from the fact that FEC and the appellant both failed to notify the Post Office that mail with the name of appellant on it should also be forwarded to the new address of FEC. The responsibility so to advise the Post Office must rest solely with appellant or FEC.

Accordingly, we find that one of the conditions for legal notice specified in 43 CFR 1810.2, i.e., failure to leave a forwarding address, is clearly present in this case. Regardless of any information submitted by appellant, the uncontradicted fact remains that no change of address form for Clyde K. Kobbeman was filed with the Post Office. The copy of the change of address form filed by FEC shows a change of address for FEC, not Clyde Kobbeman, and the Post Office properly delivered appellant's rental notice to 6060. A notice sent by certified mail will be deemed to have been received if it was delivered to the addressee's last address of record "regardless of whether it was in fact received by him." John S. Pehar, 41 IBLA 191 (1979). So, appellant is deemed to have received the notice of rental due as required by 43 CFR 3112.4-1. Appellant, having been given the benefit of notice properly mailed to his address of record, was disqualified as an offeror 15 days after notice was returned by the Post Office. Charles M. Brady, 33 IBLA 375 (1978). In our view of the foregoing, we find that BLM acted properly. Roy Lindgren, 43 IBLA 139 (1979).

Therefore, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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James L. Burski  
Administrative Judge

